Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

G.R. No. L-47379 May 16, 1988

NATIONAL POWER CORPORATION, petitioner,
vs.
HONORABLE COURT OF APPEALS and ENGINEERING CONSTRUCTION, INC., respondents.

G.R. No. L-47481 May 16, 1988

ENGINEERING CONSTRUCTION, INC., petitioner,
vs.
COUTRT OF APPEALS and NATIONAL POWER CORPORATION, respondents.

Raymundo A. Armovit for private respondent in L-47379.

The Solicitor General for petitioner.

GUTIERREZ, JR., *J.:*

These consolidated petitions seek to set aside the decision of the respondent Court of Appeals which adjudged the National Power Corporation liable for damages against Engineering Construction, Inc. The appellate court, however, reduced the amount of damages awarded by the trial court. Hence, both parties filed their respective petitions: the National Power Corporation (NPC) in G.R. No. 47379, questioning the decision of the Court of Appeals for holding it liable for damages and the Engineering Construction, Inc. (ECI) in G.R. No. 47481, questioning the same decision for reducing the consequential damages and attorney's fees and for eliminating the exemplary damages.

The facts are succinctly summarized by the respondent Court of Appeals, as follows:

> On August 4, 1964, plaintiff Engineering Construction, Inc., being a successful bidder, executed a contract in Manila with the National Waterworks and Sewerage Authority (NAWASA), whereby the former undertook to furnish all tools, labor, equipment, and materials (not furnished by Owner), and to construct the proposed 2nd Ipo-Bicti Tunnel, Intake and Outlet Structures, and Appurtenant Structures, and Appurtenant Features, at Norzagaray, Bulacan, and to complete said works within eight hundred (800) calendar days from the date the Contractor receives the formal notice to proceed (Exh. A).
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> The project involved two (2) major phases: the first phase comprising, the tunnel work covering a distance of seven (7) kilometers, passing through the mountain, from the Ipo river, a part of Norzagaray, Bulacan, where the Ipo Dam of the defendant National Power Corporation is located, to Bicti; the other phase consisting of the outworks at both ends of the tunnel.
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> By September 1967, the plaintiff corporation already had completed the first major phase of the work, namely, the tunnel excavation work. Some portions of the outworks at the Bicti site were still under construction. As soon as the plaintiff corporation had finished the tunnel excavation work at the Bicti site, all the equipment no longer needed there were transferred to the Ipo site where some projects were yet to be completed.
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> The record shows that on November 4,1967, typhoon 'Welming' hit Central Luzon, passing through defendant's Angat Hydro-electric Project and Dam at Ipo, Norzagaray, Bulacan. Strong winds struck the project area, and heavy rains intermittently fell. Due to the heavy downpour, the water in the reservoir of the Angat Dam was rising perilously at the rate of sixty (60) centimeters per hour. To prevent an overflow of water from the dam, since the water level had reached the danger height of

> 212 meters above sea level, the defendant corporation caused the opening of the spillway gates." (pp. 45-46, L-47379, Rollo)

The appellate court sustained the findings of the trial court that the evidence preponlderantly established the fact that due to the negligent manner with which the spillway gates of the Angat Dam were opened, an extraordinary large volume of water rushed out of the gates, and hit the installations and construction works of ECI at the lpo site with terrific impact, as a result of which the latter's stockpile of materials and supplies, camp facilities and permanent structures and accessories either washed away, lost or destroyed.

The appellate court further found that:

> It cannot be pretended that there was no negligence or that the appellant exercised extraordinary care in the opening of the spillway gates of the Angat Dam. Maintainers of the dam knew very well that it was far more safe to open them gradually. But the spillway gates were opened only when typhoon Welming was already at its height, in a vain effort to race against time and prevent the overflow of water from the dam as it 'was rising dangerously at the rate of sixty centimeters per hour. 'Action could have been taken as early as November 3, 1967, when the water in the reservoir was still low. At that time, the gates of the dam could have been opened in a regulated manner. Let it be stressed that the appellant knew of the coming of the typhoon four days before it actually hit the project area. (p. 53, L-47379, Rollo)

As to the award of damages, the appellate court held:

> We come now to the award of damages. The appellee submitted a list of estimated losses and damages to the tunnel project (lpo side) caused by the instant flooding of the Angat River (Exh. J-1). The damages were itemized in four categories, to wit: Camp Facilities P55,700.00; Equipment, Parts and Plant — P375,659.51; Materials P107,175.80; and Permanent Structures and accessories — P137,250.00, with an aggregate total amount of P675,785.31. The list is supported by several vouchers which were all submitted as Exhibits K to M-38 a, N to O, P to U-2 and V to X- 60-a (Vide: Folders Nos. 1 to 4). The appellant did not submit proofs to traverse the aforementioned documentary evidence. We hold that the lower court did not commit any error in awarding P 675,785.31 as actual or compensatory damages.
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> However, We cannot sustain the award of P333,200.00 as consequential damages. This amount is broken down as follows: P213,200.00 as and for the rentals of a crane to temporarily replace the one "destroyed beyond repair," and P120,000.00 as one month bonus which the appellee failed to realize in accordance with the contract which the appellee had with NAWASA. Said rental of the crane allegedly covered the period of one year at the rate of P40.00 an hour for 16 hours a day. The evidence, however, shows that the appellee bought a crane also a crawler type, on November 10, 1967, six (6) days after the incident in question (Exh N) And according to the lower court, which finding was never assailed, the appellee resumed its normal construction work on the lpo- Bicti Project after a stoppage of only one month. There is no evidence when the appellee received the crane from the seller, Asian Enterprise Limited. But there was an agreement that the shipment of the goods would be effected within 60 days from the opening of the letter of credit (Exh. N). It appearing that the contract of sale was consummated, We must conclude or at least assume that the crane was delivered to the appellee within 60 days as stipulated. The appellee then could have availed of the services of another crane for a period of only one month (after a work stoppage of one month) at the rate of P 40.00 an hour for 16 hours a day or a total of P 19,200.00 as rental.
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> But the value of the new crane cannot be included as part of actual damages because the old was reactivated after it was repaired. The cost of the repair was P 77,000.00 as shown in item No. 1 under the Equipment, Parts and Plants category (Exh. J-1), which amount of repair was already included in the actual or compensatory damages. (pp. 54-56, L-47379, Rollo)

The appellate court likewise rejected the award of unrealized bonus from NAWASA in the amount of P120,000.00 (computed at P4,000.00 a day in case construction is finished before the specified time, i.e., within 800 calendar days), considering that the incident occurred after more than three (3) years or one thousand one hundred seventy (1,170) days. The court also eliminated the award of exemplary damages as there was no gross negligence on the part of NPC and reduced the amount of attorney's fees from P50,000.00 to P30,000.00.

In these consolidated petitions, NPC assails the appellate court's decision as being erroneous on the ground that the destruction and loss of the ECI's equipment and facilities were due to force majeure. It argues that the rapid rise of the water level in the reservoir of its Angat Dam due to heavy rains brought about by the typhoon was an extraordinary occurrence that could not have been foreseen, and thus, the subsequent release of water through the spillway gates and its resultant effect, if any, on ECI's equipment and facilities may rightly be attributed to force majeure.

On the other hand, ECI assails the reduction of the consequential damages from P333,200.00 to P19,000.00 on the grounds that the appellate court had no basis in concluding that ECI acquired a new Crawler-type crane and therefore, it only can claim rentals for the temporary use of the leased crane for a period of one month; and that the award of P4,000.00 a day or P120,000.00 a month bonus is justified since the period limitation on ECI's contract with NAWASA had dual effects, i.e., bonus for earlier completion and liquidated damages for delayed performance; and in either case at the rate of P4,000.00 daily. Thus, since NPC's negligence compelled work stoppage for a period of one month, the said award of P120,000.00 is justified. ECI further assailes the reduction of attorney's fees and the total elimination of exemplary damages.

Both petitions are without merit.

It is clear from the appellate court's decision that based on its findings of fact and that of the trial court's, petitioner NPC was undoubtedly negligent because it opened the spillway gates of the Angat Dam only at the height of typhoon "Welming" when it knew very well that it was safer to have opened the same gradually and earlier, as it was also undeniable that NPC knew of the coming typhoon at least four days before it actually struck. And even though the typhoon was an act of God or what we may call force majeure, NPC cannot escape liability because its negligence was the proximate cause of the loss and damage. As we have ruled in *Juan F. Nakpil & Sons v. Court of Appeals*, (144 SCRA 596, 606-607):

> Thus, if upon the happening of a fortuitous event or an act of God, there concurs a corresponding fraud, negligence, delay or violation or contravention in any manner of the tenor of the obligation as provided for in Article 1170 of the Civil Code, which results in loss or damage, the obligor cannot escape liability.
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> The principle embodied in the act of God doctrine strictly requires that the act must be one occasioned exclusively by the violence of nature and human agencies are to be excluded from creating or entering into the cause of the mischief. When the effect, the cause of which is to be considered, is found to be in part the result of the participation of man, whether it be from active intervention or neglect, or failure to act, the whole occurrence is thereby humanized, as it was, and removed from the rules applicable to the acts of God. (1 Corpus Juris, pp. 1174-1175).
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> Thus, it has been held that when the negligence of a person concurs with an act of God in producing a loss, such person is not exempt from liability by showing that the immediate cause of the damage was the act of God. To be exempt from liability for loss because of an act of God, he must be free from any previous negligence or misconduct by which the loss or damage may have been occasioned. (Fish & Elective Co. v. Phil. Motors, 55 Phil. 129; Tucker v. Milan 49 O.G. 4379; Limpangco & Sons v. Yangco Steamship Co., 34 Phil. 594, 604; Lasam v. Smith, 45 Phil. 657).

Furthermore, the question of whether or not there was negligence on the part of NPC is a question of fact which properly falls within the jurisdiction of the Court of Appeals and will not be disturbed by this Court unless the same is clearly unfounded. Thus, in *Tolentino v. Court of appeals*, (150 SCRA 26, 36) we ruled:

> Moreover, the findings of fact of the Court of Appeals are generally final and conclusive upon the Supreme Court (Leonardo v. Court of Appeals, 120 SCRA 890 [1983]. In fact it is settled that the Supreme Court is not supposed to weigh evidence but only to determine its substantially (Nuñez v. Sandiganbayan, 100 SCRA 433 [1982] and will generally not disturb said findings of fact when supported by substantial evidence (Aytona v. Court of Appeals, 113 SCRA 575 [1985]; Collector of Customs of Manila v. Intermediate Appellate Court, 137 SCRA 3 [1985]. On the other hand substantial evidence is defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion (Philippine Metal Products, Inc. v. Court of Industrial Relations, 90 SCRA 135 [1979]; Police Commission v. Lood, 127 SCRA 757 [1984]; Canete v. WCC, 136 SCRA 302 [1985])

Therefore, the respondent Court of Appeals did not err in holding the NPC liable for damages.

Likewise, it did not err in reducing the consequential damages from P333,200.00 to P19,000.00. As shown by the records, while there was no categorical statement or admission on the part of ECI that it bought a new crane to replace the damaged one, a sales contract was presented to the effect that the new crane would be delivered to it by Asian Enterprises within 60 days from the opening of the letter of credit at the cost of P106,336.75. The offer was made by Asian Enterprises a few days after the flood. As compared to the amount of P106,336.75 for a brand new crane and paying the alleged amount of P4,000.00 a day as rental for the use of a temporary crane, which use petitioner ECI alleged to have lasted for a period of one year, thus, totalling P120,000.00, plus the fact that there was already a sales contract between it and Asian Enterprises, there is no reason why ECI should opt to rent a temporary crane for a period of one year. The appellate court also found that the damaged crane was subsequently repaired and reactivated and the cost of repair was P77,000.00. Therefore, it included the said amount in the award of of compensatory damages, but not the value of the new crane. We do not find anything

erroneous in the decision of the appellate court that the consequential damages should represent only the service of the temporary crane for one month. A contrary ruling would result in the unjust enrichment of ECI.

The P120,000.00 bonus was also properly eliminated as the same was granted by the trial court on the premise that it represented ECI's lost opportunity "to earn the one month bonus from NAWASA ... ." As stated earlier, the loss or damage to ECI's equipment and facilities occurred long after the stipulated deadline to finish the construction. No bonus, therefore, could have been possibly earned by ECI at that point in time. The supposed liquidated damages for failure to finish the project within the stipulated period or the opposite of the claim for bonus is not clearly presented in the records of these petitions. It is not shown that NAWASA imposed them.

As to the question of exemplary damages, we sustain the appellate court in eliminating the same since it found that there was no bad faith on the part of NPC and that neither can the latter's negligence be considered gross. In *Dee Hua Liong Electrical Equipment Corp. v. Reyes*, (145 SCRA 713, 719) we ruled:

> Neither may private respondent recover exemplary damages since he is not entitled to moral or compensatory damages, and again because the petitioner is not shown to have acted in a wanton, fraudulent, reckless or oppressive manner (Art. 2234, Civil Code; Yutuk v. Manila Electric Co., 2 SCRA 377; Francisco v. Government Service Insurance System, 7 SCRA 577; Gutierrez v. Villegas, 8 SCRA 527; Air France v. Carrascoso, 18 SCRA 155; Pan Pacific (Phil.) v. Phil. Advertising Corp., 23 SCRA 977; Marchan v. Mendoza, 24 SCRA 888).

We also affirm the reduction of attorney's fees from P50,000.00 to P30,000.00. There are no compelling reasons why we should set aside the appellate court's finding that the latter amount suffices for the services rendered by ECI's counsel.

WHEREFORE, the petitions in G.R. No. 47379 and G.R. No. 47481 are both DISMISSED for LACK OF MERIT. The decision appealed from is AFFIRMED.

SO ORDERED.

Fernan (Chairman), Feliciano, Bidin and Cortes, JJ., concur.

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